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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/621,071	07/14/2003	Derek Raybould	H0003569	1262

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Honeywell International, Inc.  
Law Dept. AB2  
P.O. Box 2245  
Morristown, NJ 07962-9806

EXAMINER
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BEVERIDGE, RACHEL E

ART UNIT	PAPER NUMBER
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1725

MAIL DATE	DELIVERY MODE
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07/30/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	Application No. 10/621,071	Applicant(s) RAYBOULD ET AL.	
	Examiner Rachel E. Beveridge	Art Unit 1725	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 19 June 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/reb/  
25 July 2007

## CONTINUATION OF ITEM 11

### *Response to Arguments*

Applicant's arguments filed June 19, 2007 have been fully considered but they are not persuasive.

The Declaration of Derek Raybould under 37 CFR 1.132 filed June 19, 2007 is insufficient to overcome the rejection of claims based upon 18-20 and 22-39 as set forth in the last Office action because: (1) the declaration was not filed in a timely manner, before a final rejection, and (2) the declaration is not sufficient to overcome a 35 U.S.C. 102(b) statutory bar. Furthermore the declaration is insufficient to overcome the rejection of claims because the declaration is not commensurate in scope with the claims. In particular,

1. Mr. Raybould discusses brazing in generalities-- without regard to the specific braze composition-- in sections 7 and 8. Nowhere does Mr. Raybould explain why one of ordinary skill would not interpret "about 15% Zr" to include 12%.
2. Mr. Raybould explains in detail that braze chemistry must be tightly controlled. Mr. Raybould, however, does not explain why one of ordinary skill should not begin with a Zr composition of 12% and then tightly control that composition. That is, Mr. Raybould has not explained why one of ordinary skill in the art would not have read "about 15% Zr" to include 12% Zr. Furthermore, Mr. Raybould explains that a tolerance of critical elements is within +/- 1%, and even within this tolerance the amounts do not overlap. However, Mr. Raybould has not provided evidence or explanation as to the reasons why one of ordinary skill in the art

would only apply a tolerance of +/- 1% for the critical elements, or explained why "about 15wt%" in tolerances does not overlap with the tolerances of 12%. For instance, if Mr. Raybould's tolerance declaration was also applied to "about" then "about 15%" could also include 14% or 16%. In which, a tolerance of 14% would include 13% and overlap with the +1% tolerance of Applicant's 12%.

3. Mr. Raybould's reference to 10 C change in braze temperature is merely an assertion with no basis in fact. Presumably, Mr. Raybould's information comes from the Figure shown in applicant's arguments at page 12 of 15, but this Zr/temperature graph does not show what TiCuNiZr composition is being tested. It is not known whether this graph represents the claimed TiCuZiZr composition or some other composition altogether.

4. Mr. Raybould references heat exchanger in section 9, however heat exchangers are not claimed.

Applicant argues the restriction of claim 45 and requests rejoinder (page 7). The examiner disagrees. Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 45 is withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Applicant argues that anticipation under 102 can be found only when the reference discloses exactly what is claimed, and disagrees that "about 15wt%" Zr of the prior art anticipates Applicant's claim of "not more than 12wt%" (pages 9-10). The

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examiner disagrees. The examiner reminds the applicant of all previous responses with regard to this argument; and maintains the position that "about 15 wt%" anticipates and encompasses "not more than 12wt%," especially including that the prior art of record (Vollmer) does not teach or suggest that "about 15 wt%" cannot be less than 15 wt % or in fact possibly 12wt%. Vollmer's disclosure clearly encompasses a broad range which includes Applicant's claimed "not more than 12wt%." Furthermore, Applicant's arguments or declaration have not explained why "about 15wt%" in tolerances does not overlap with the tolerances of 12%. For instance, if Mr. Raybould's tolerance declaration was also applied to "about" then "about 15%" could also include 14% or 16%. In which, a tolerance of 14% would include 13% and overlap with the +1% tolerance of Applicant's 12%. Hence, Vollmer's broad disclosure of about 15% clearly overlaps 12% and it's positive +1% tolerance, and is therefore further proof that Vollmer anticipates the Applicant's claim limitation.

Applicant argues that it appears as though the Examiner is concluding that a 20% change in composition makeup is close enough that one skilled in the art would expect the same, and argues that one skilled in the art would understand that such a large variation in the braze composition would lead to significant differences in braze temperatures and poor brazes or ruined parts (page 11). The examiner first disagrees that the composition of Zr content in the braze composition comprises 20% of the composition as that Zr does not make up the majority of the braze material. Therefore, changes to the composition of Zr are a smaller percentage of change with regard to the overall composition. Furthermore, In response to applicant's argument that the

references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., braze temperature differences based on different braze compositions) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Thus, the criticality of the braze composition percentage as claimed is not as detailed within the claims as Applicant's arguments with regard to further temperature changes due to changes in the braze composition.

Applicant continues to argue the criticality of the temperature change based on a graph displayed in the arguments (page 12) and in the declaration. However, the examiner once again reminds the applicant that this graph is not commensurate in scope with the original specification and the temperatures being argued are not instantly claimed.

The applicant then provides an example of temperature change based on changes in the Zr composition of two different braze compositions (page 13). However, the examiner does not find this argument convincing as that the Ti content also changes from 47 to 50 (also a 3% different), and there has been no evidence provided to show that the temperature changes are not a factor of the Ti changes as well, or to what degree the temperature changes based on changes in the Ti composition alone. It cannot be judged solely that the Zr content change alone is enough to provide the temperature change disclosed by the applicant. Therefore, this argument is not persuasive.

Applicants have then provided additional studies to attempt to overcome the 102 rejection of record (see pages 14-16). The examiner notes that this evidence was not timely filed before final rejection of the instant application, nor was it appropriately filed within an affidavit or declaration. Applicant is reminded that the arguments of counsel cannot take the place of evidence of the record. In re Schulze, 346 F.2d 600, 602, 145 USPQ 716, 718 (CCPA 1965).

### ***Conclusion***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rachel E. Beveridge whose telephone number is 571-272-5169. The examiner can normally be reached on Monday through Friday, 9 am to 6 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jonathan Johnson can be reached on 571-272-1177. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/reb/  
25 July 2007



**JONATHAN JOHNSON**  
**PRIMARY EXAMINER**